

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ADAM D. GRIMES

PLAINTIFF

V.

CIVIL ACTION NO.1:07CV192-NBB-JAD

LOWNDES COUNTY SHERIFF'S DEPARTMENT, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On September 26, 2007, plaintiff, a pretrial detainee at the Lowndes County Adult Detention Center, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Grimes' complaint alleges that he has been denied adequate medical care. He claims that he was seen by a Dr. Stanback on arrival at the Lowndes County Adult Detention Center. He claims that he was injured when Dr. Stanback administered an injection in his upper back. At the hearing, Grimes was wearing a cervical collar supplied to him at his request. He testified to receiving medical care from a Dr. White and Dr. Landry. He admitted that there had been no denial of medical care. Grimes has not shown that he has any claim for a constitutional violation. *Ruiz v. Estelle*, 679 F.2d 1115, 1149 (5th Cir. 1982). At best, plaintiff may have a claim under state law of medical malpractice against defendant Stanback. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (An allegation that the doctor has been negligent in treating a medical condition does not state a valid claim under the Eighth Amendment.).

The undersigned recommends that the complaint be dismissed without prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(C) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 4th day of October, 2007.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE